

Small Business Administration

§ 120.1726

§ 120.1719 SBA's right to recover from Seller.

SBA is entitled to recover from Seller any monies paid on SBA's guarantee of a Pool Certificate backed in part by Seller's Pool Loan, plus interest, if SBA in its sole discretion determines that any of the following events has occurred:

- (a) Seller's improper action or inaction has put SBA at risk;
- (b) Seller has failed to disclose a material fact to SBA regarding a Seller's Pool Loan in a timely manner;
- (c) Seller has misrepresented a material fact to SBA regarding Seller's Pool Loan;
- (d) Seller has failed to comply materially with § 120.1720 of this subpart;
- (e) SBA has received a written request from Seller to terminate the SBA's guarantee on the Loan Interest in Seller's Pool Loan;
- (f) Seller has failed to comply materially with Program Rules and Regulations; or
- (g) Seller has failed to make, close, service or liquidate Seller's Pool Loan in a prudent manner.

§ 120.1720 SBA's right to review Pool Loan documents.

In the event that SBA purchases a Loan Interest in Seller's Pool Loan, Seller must provide to SBA copies of the Pool Loan collateral documents, Pool Loan underwriting documents, and any other documents SBA may require in writing within 15 calendar days of a written request from SBA (which SBA will review in connection with its efforts to determine if Seller is obligated to reimburse SBA pursuant to this subpart). A Seller's failure to provide the requested documentation may constitute a material failure to comply with the Program Rules and Regulations and may lead to an action for recovery under § 120.1719. SBA will also evaluate a Seller's continued participation in the Program and may restrict further sales under the Program until SBA determines that the Seller has provided sufficient documentation.

§ 120.1721 SBA's right to investigate.

SBA may undertake such investigation as it deems necessary to determine whether it is entitled to seek re-

covery from the Seller and Seller agrees to take whatever actions are necessary to facilitate such investigation.

§ 120.1722 SBA's offset rights.

SBA shall have the right to offset any amount owed by Lender to SBA, including, without limitation, an offset against CSA's obligation to pay Lender pursuant to any Section 504 First Mortgage Loan Pool Guarantee Agreement.

§ 120.1723 Pool Loan receivables received by Seller.

Any Pool Loan Receivables received by Seller in connection with obligations under Seller's Pool Loan must be forwarded by Seller to CSA within two business days of receipt of collected funds.

§ 120.1724 Servicing and liquidation expenses.

All ordinary and reasonable expenses of servicing and liquidating Seller's Pool Loan shall be paid by, or be recoverable from, Obligor, and all such ordinary and reasonable expenses incurred by Seller or SBA which are not recoverable from Obligor shall be shared ratably by Seller, SBA, and the Pool Originator pursuant to the applicable percentages set forth in the First Lien Position 504 Loan Pool Guarantee Agreement.

§ 120.1725 No Program Preference by Seller or Pool Originator.

The Seller and the Pool Originator must not establish a Program Preference, which is defined in 13 CFR 120.10.

§ 120.1726 Pool Certificates a Seller cannot purchase.

Neither a Seller, nor any of its Program Associates or Affiliates, may purchase a Pool Certificate that is backed by a Loan Interest in a Pool Loan that the Seller, or any of its Program Associates or Affiliates, originated or owned, and, in the event such purchase occurs, SBA's guarantee shall not be in effect with respect to any such Pool Certificate.